

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Kenneth Eull
Sharon Eull

NOTICE OF HEARING AND
MOTION FOR RELIEF FROM
AUTOMATIC STAY

Debtors

Chapter 7, Case No. 04-34086

TO: Kenneth Eull and Sharon Eull, INCLUDING TRUSTEE AND OTHER INTERESTED
PARTIES

1. Wells Fargo Bank, N.A., (“Movant”), a corporation, by its attorneys, moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 9:30 am on September 22, 2004, in Courtroom 228A, 316 North Robert Street, St. Paul, MN 55101 or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than on September 17, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than September 13, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, FRBP Nos. 5005 and Local Rule 1070-1. This is a core proceeding. The Chapter 7 case was filed on July 13, 2004, and is now pending in this court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rules of Bankruptcy Procedure 4001, and is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 1201-1215. Movant requests relief with respect to the property of Debtors, subject to a mortgage to Movant.

6. Debtors above-named are the owners of certain real property located at 7416 167th Street West, Rosemount, MN 55068, legally described as follows, to-wit:

Lot 4, Block 4, Donnay's College Park, Dakota County, Minnesota.

7. The indebtedness of Kenneth Eull and Sharon Eull is evidenced by a Promissory Note and Mortgage dated February 13, 2002, filed of record in the Dakota County Recorder's office on May 9, 2002, and recorded as Document No. 1894627. A true and correct copy of the front page of the recorded mortgage is attached as Exhibit A. Said mortgage was subsequently assigned to Movant.

8. The Debtors have failed to pay monthly mortgage payments since July 1, 2004, and are in default in the amount of \$3,833.34 together with reasonable attorneys fees and costs incurred pursuant to the note and mortgage. Debtors have failed to make any offer of adequate protection. Accordingly, Movant's interest is inadequately protected.

9. The total amount due under the mortgage and note as of the date of hearing is approximately \$146,900.00.

10. The Debtors have executed another mortgage in favor of US Bank in the original amount of \$41,622.82. Upon information and belief, the principal balance of said mortgage is still in that amount.

11. The Dakota County Assessor's Office has estimated the value of the homestead as \$181,200.00 and accordingly, Debtors have no equity in the premises and the property is not necessary to an effective reorganization.

12. By reason of the foregoing, Movant is entitled to have the automatic stay lifted and vacated so it can recommence the mortgage foreclosure action pursuant to Minnesota Statutes.

WHEREFORE, Movant by its undersigned attorney, moves the Court for an Order that the automatic stay provided by 11 U.S.C. Section 362 (A) be terminated to permit Movant to foreclose its mortgage on the subject property, and for such other and further relief as may be just and equitable.

Dated: August 25, 2004

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo
Paul A. Weingarden, #115356
Brian H. Liebo #277654
Attorney for Movant
4500 Park Glen Road, #120
Minneapolis, MN 55416
(952) 925-6888

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Kenneth Eull
Sharon Eull

AFFIDAVIT OF PETITIONER

Debtors

Chapter 7, Case No. 04-34086

STATE OF SOUTH CAROLINA)

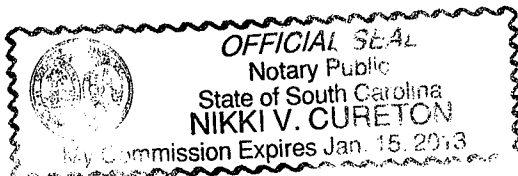
COUNTY OF York)

Karan Abenethy, being first duly sworn, deposes and states on oath that she/he is employed by Wells Fargo Bank, N.A., the movant in this action, that she/he has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of her/his knowledge to the best of her/his information.

Karan Abenethy

Subscribed and sworn to before me this
11th day of August, 2004.

Nikki V. Cureton
Notary Public



1894627

OFFICE OF THE COUNTY RECORDER
DAKOTA COUNTY, MINNESOTA
CERTIFIED THAT THE WITHIN INSTRUMENT
WAS RECORDED IN THIS OFFICE ON AND AT

2002 MAY -9 P 1:27

DOC. NO. **1894627**
JOEL T. BECKMAN, COUNTY RECORDER
BY: *JS* Deputy
FEE **9.00** SURCHARGE **5.00**
CASH ☐ CHECK ☒ ESCROW ☐

WELL ☐ CHARGE ☐

CHARGE TO: _____

O/R _____

DO NOT REMOVE

TITLE RECORDING SERVICES

DAKOTA COUNTY TREASURER-AUDITOR
05/06/2002 14:02:06 670738
REGISTRATION TAX 337.67
COUNTY CONSERVATION FEE 5.00
RECEIPT NUMBER 523016

1894627

[Space Above This Line For Recording Data]

MORTGAGE

4439229TEM

Return To:

WELLS FARGO HOME MORTGAGE, INC.
FINAL DOCUMENTS X4701-024
3601 MINNESOTA DRIVE
BLOOMINGTON, MN 55435-5284

Title Recording Services, Inc.
1043 Grand Avenue #259
St. Paul, MN 55105
DAKOTA A

320085

EULL

DRNUSA JUNIOR



MTG

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated **FEBRUARY 13, 2002** together with all Riders to this document.

(B) "Borrower" is

KENNETH F. EULL AND SHARON D. EULL, HUSBAND AND WIFE

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is **WELLS FARGO HOME MORTGAGE, INC.**

Lender is a **Corporation**

organized and existing under the laws of **THE STATE OF CALIFORNIA**

MINNESOTA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Page 1 of 18

Initials: *JS*
SR

FORM 3024 1/01

SMN01 Rev 08/13/01

RECEIVED

APR 25 2002

DAKOTA COUNTY
TREASURER-AUDITOR

Lender's address is

P. O. BOX 5137, DES MOINES, IA 50306-5137

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated **FEBRUARY 13, 2002**. The Note states that Borrower owes Lender **ONE HUNDRED FORTY-SIX THOUSAND NINE HUNDRED AND NO/100** Dollars

(U.S. \$ ~~146,900.00~~ **146,900.00**) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **MARCH 1, 2032**

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

<input type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> VA Rider	<input type="checkbox"/> Biweekly Payment Rider	<input type="checkbox"/> Other(s) [specify]

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(K) "Escrow Items" means those items that are described in Section 3.

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that

governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA. (P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns, with power of sale, the following described property located in the

County of DAKOTA
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]:

LEGAL DESCRIPTION IS ATTACHED HERETO AS SCHEDULE "A" AND MADE A PART HEREOF.

Parcel ID Number: 7416 167TH ST W ROSEMOUNT ("Property Address"); which currently has the address of [Street] [City] , Minnesota 55068 [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

LEGAL DESCRIPTION

LOT 4, BLOCK 4, DONNAY'S COLLEGE PARK, DAKOTA COUNTY, MINNESOTA.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Kenneth Eull
Sharon Eull

MEMORANDUM OF LAW

Debtors

Chapter 7, Case No. 04-34086

Wells Fargo Bank, N.A. ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, perfected mortgage on real property owned by the Debtors. On the date of filing, the Debtors were delinquent under the note and mortgage. Since this case was filed Debtors have made no payments to Movant and the arrears total \$3,833.34.

ARGUMENT

1. Under Section 362.(d)(2) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." The Debtors in this case have failed to make payments required by the note and mortgage for a period of more than 3 months. Debtors have not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of §362(d)(1), justifying relief from the stay. In Re: Video East, Inc., 41 B.R. 176 (Bkrtcy. E.D. Pa. 1984); In Re: Frascatore, 33 B.R. 687 (Bkrtcy. E.D. Pa. 1983).

2. Pursuant to §362(d)(2) of the Bankruptcy Code, relief from the stay is appropriate where Debtors have no equity and the property is not necessary to an effective reorganization. 11 U.S.C. §362(d)(2). See, In Re: Gellert, 55 B.R. 970 (Bkrtcy. D. N. H. 1983). In this case the

balance due Movant is approximately \$146,900.00 and including the amount due the other mortgage holder, the approximate total amount encumbering the property is \$188,522.82. The value of the property is approximately \$181,200.00. Clearly, the Debtors have no equity in the property, and as this is a Chapter 7 case, the property is not necessary to an effective reorganization.

CONCLUSION

Movant is entitled to relief from the automatic stay pursuant to 11 U.S.C. §362(d)(1) for cause, where its interest in the secured property is not adequately protected. Movant is also entitled to relief from the automatic stay pursuant to 11 U.S.C. §362(d)(2) when Debtors have no equity, and when the property is not necessary to an effective reorganization.

Movant respectfully requests an Order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated: August 25, 2004

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo
Paul A. Weingarden, #115356
Brian H. Liebo #277654
Attorney for Movant
4500 Park Glen Road, #120
Minneapolis, MN 55416
(952) 925-6888

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Kenneth Eull
Sharon Eull

Debtors

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Chapter 7, Case No. 04-34086

Erin Kay Buss, employed on this date by USSET & WEINGARDEN, attorney(s) licensed to practice law in this court, with office address of Suite 120, 4500 Park Glen Road, Minneapolis, Minnesota 55416, upon penalty of perjury, declares that on August 25, 2004, I served the annexed Notice of Hearing and Motion for Relief from Automatic Stay upon each of the entities named below by mailing to them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

Office of the United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Michael J. Iannacone
Chapter 7 Trustee
8687 Eagle Point Boulevard
Lake Elmo, MN 55042

Joseph L. Kelly, Esq.
Kelly Law Office
12400 Portland Avenue South, Suite 120
Burnsville, MN 55337

Kenneth Eull
Sharon Eull
7416 167th Street West
Rosemount, MN 55068

/E/ Erin Kay Buss
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Kenneth Eull
Sharon Eull

ORDER

Debtors.

Chapter 7, Case No. 04-34086

The above entitled matter came on for hearing upon motion of Wells Fargo Bank, N.A., ("Movant"), pursuant to 11 U.S.C. Section 362 on September 22, 2004, at the U.S. Bankruptcy Court, St. Paul, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED THAT:

The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors and/or assigns, has an interest, said property legally described as follows, to-wit:

Lot 4, Block 4, Donnay's College Park, Dakota County, Minnesota.

Movant may proceed to foreclose its mortgage in accordance with Minnesota Statutes. Movant's request for attorneys fees and costs shall not be considered as this is governed by state law. Notwithstanding Federal Rules of Bankruptcy Procedure 4001(a)(3), this order is effective immediately.

Dated this ____ day of _____, 2004.

Judge of the Bankruptcy Court